

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

CAPITAL ONE BANK,	:	Case No. 1:07CV3252
	:	
Plaintiff,	:	JUDGE O'MALLEY
	:	
v.	:	
	:	
STEPHANIE FINDISH,	:	<u>MEMORANDUM & OPINION</u>
	:	
Defendant/Third-Party Plaintiff	:	
	:	
v.	:	
	:	
CAPITAL ONE FINANCIAL	:	
CORPORATION, et al.,	:	
	:	
Third-Party Defendants.	:	

This debt collection action was removed by Stephanie Findish from the Oberlin Municipal Court on October 22, 2007. While the municipal court complaint sought only \$ 2,412.94 in damages, Ms. Findish based her removal petition on a counterclaim she filed along with her removal papers. Specifically, Ms. Findish removed this action premised on a counterclaim in which she alleged, among other things, violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq., and in which she sought in excess of \$75,000 in damages from the Plaintiff. Ms. Findish, thus, premised her jurisdictional allegations on the fact that her counterclaim contained claims arising under federal law

and which would satisfy the jurisdictional floor for the exercise of this Court's diversity jurisdiction.

On October 25, 2007, the Plaintiff/Third-Party Defendant, Capital One Bank, and a new Third Party Defendant, Javitch Block & Rathbone, moved to remand this action to state court. In their motion, both of these parties correctly pointed out that removal must be predicated upon the claims asserted on the face of the state court complaint to be removed, and that removal may not be premised upon the assertion of claims appearing in a counterclaim, no matter how related to or otherwise intertwined with the matters asserted in the original complaint.

On October 31, 2007, Ms. Findish filed a "motion to dismiss without prejudice," which indicates Ms. Findish's willingness to return to state court for purposes of defending the original action and to, at least at this stage, abandon the claims in her counterclaim.

Because there was no proper basis under 28 U.S.C. § 1441 for the removal of this action to this Court, it is hereby **REMANDED** to the Oberlin Municipal Court. Because this Court never had the authority to exercise jurisdiction over Ms. Findish's counterclaim and third-party complaint, Ms. Findish's Motion to Dismiss those pleadings without prejudice is **DENIED** as moot. She should address her desire to abandon those claims to the state court to which this action is returned.

IT IS SO ORDERED.

s/Kathleen M. O'Malley
KATHLEEN McDONALD O'MALLEY
UNITED STATES DISTRICT JUDGE

DATED: November 8, 2007

